

March 11, 2010

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

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WALTER & WILHELM LAW GROUP  
a Professional Corporation  
Riley C. Walter #91839  
8305 North Fresno Street, Ste. 410  
Fresno, CA 93720  
Telephone: (559) 435-9800  
Facsimile: (559) 435-9868  
E-mail: rileywalter@W2LG.com

Attorneys for Pandol Brothers, Inc.

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re

JAMES ALAN PANDOL,

Debtor.

Tax ID#: xxx-xx-7844  
Address: P.O. Box 1592  
Delano, CA 93216

PANDOL BROS., INC.,

Plaintiff,

vs.

JAMES A. PANDOL,

Defendant.

CASE NO. 09-62162

Chapter 12

**COMPLAINT TO DETERMINE  
DISCHARGEABILITY OF DEBT  
PURSUANT TO 11 U.S.C. SECTION  
523**

Adversary Proceeding No. \_\_\_\_\_

Date: N/A

Time: N/A

Place: 1300 18<sup>th</sup> Street, First Fl.  
Bakersfield, CA  
Dept. B

Judge: Honorable W. Richard Lee

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5. The Defendant's domicile is within the district and this is an adversary proceeding arising under Title 11 or related to a case under Title 11.

8. James A. Pandol ("Pandol") is an individual residing at 903 14<sup>th</sup> Ave., Delano, California. Defendant Pandol is the Debtor in the subject Chapter 12 proceeding, having filed a Voluntary Chapter 12 proceeding on December 14, 2009.

10. For over 50 years, since as early as 1946 to the present, Plaintiff has been doing business as PANDOL, PANDOL BROS., INC. and PANDOL AND SONS and has established federal common law trademark rights to them as unregistered trademarks.

11. Commencing on or about May 1, 2006, Defendant began willfully

1 infringing on the trademarks of Plaintiff by using PANDOL as a trademark on  
2 Defendant's produce.

3 12. Commencing on or about August 1, 2006, Defendant began willfully  
4 infringing on the trademarks of Plaintiff by using PANDOL FAMILY FARMS as a  
5 trademark on Defendant's produce.  
6

7 13. Plaintiff has commenced an action before the Trademark Trial and Appeal  
8 Board at the United States Patent and Trademark Office seeking a determination that  
9 Defendant has willfully infringed on Plaintiff's trademarks and requesting that  
10 Defendant's trademark registrations be cancelled.

11 14. On March 3, 2010, Plaintiff obtained relief from stay, allowing it to continue  
12 with the matter pending before the Trademark Trial and Appeal Board.  
13

14 15. A copy of the Motion for Summary Judgment filed with the Trademark Trial  
15 and Appeal Board in the trademark cancellation action No. 92148691 is attached as  
16 Exhibit "A" setting forth specific instances of willful, wrongful, malicious and fraudulent  
17 misconduct of the Defendant, which allegations are incorporated herein.

18 **CLAIM FOR RELIEF**  
19 **11 U.S.C. 523(a)(6)**

20 16. Plaintiff re-alleges each and every allegation contained in paragraphs 1  
21 through 15 above, and incorporates the same by this reference.  
22

23 17. Defendant's wrongful use of the PANDOL and PANDOL FAMILY FARMS  
24 trademarks and wrongfully and fraudulently filing applications to register them with the  
25 United States Patent and Trademark Office caused willful, malicious, intentional injury to  
26 Plaintiff. Therefore the debt should be deemed nondischargeable pursuant to 11 U.S.C.  
27 523(a)(2)(A) and 523(a)(6) in an amount that should be determined by this Court  
28

1 following a determination by the Trademark Trial and Appeal Board in the above-  
2 referenced action, together with costs, fees and other sums Plaintiff is entitled to  
3 receive.

4 **PRAYER**

5 WHEREFORE, Plaintiff prays for relief as follows:

6  
7 1. For an Order determining that the claims of Plaintiff against Defendant are  
8 nondischargeable pursuant to 11 U.S.C. 523(a)(6).

9 2. For an Order determining that the losses and damages suffered by  
10 Plaintiff as a result of Defendant's actions complained of are nondischargeable pursuant  
11 to 11 U.S.C. 523(a)(6) in amounts to be established at trial but not less than  
12 \$300,000.00 (three hundred thousand dollars).

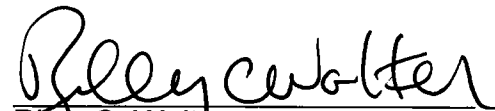
13  
14 3. For attorney's fees and costs as may be appropriate in this matter.

15 4. For such other and further relief as is just under the circumstances.

16 Dated: March 10, 2010

17 WALTER & WILHELM LAW GROUP,  
a Professional Corporation

18  
19  
20 By:

  
Riley C. Walter,  
Attorneys for Pandol Brothers, Inc.